IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12240 of 2006
To
SPECIAL CIVIL APPLICATION No. 12244 of 2006
With
SPECIAL CIVIL APPLICATION No. 12866 of 2006
With
SPECIAL CIVIL APPLICATION No. 12867 of 2006
With
SPECIAL CIVIL APPLICATION No. 12869 of 2006
To
SPECIAL CIVIL APPLICATION No. 12872 of 2006
With
SPECIAL CIVIL APPLICATION No. 13888 of 2006
With
SPECIAL CIVIL APPLICATION No. 13889 of 2006
With
SPECIAL CIVIL APPLICATION No. 12209 of 2006
With
SPECIAL CIVIL APPLICATION No. 12210 of 2006
With
SPECIAL CIVIL APPLICATION No. 13833 of 2006
With
SPECIAL CIVIL APPLICATION No. 13826 of 2006
With
SPECIAL CIVIL APPLICATION No. 13025 of 2006
With
SPECIAL CIVIL APPLICATION No. 1969 of 2006
With
CIVIL APPLICATION No. 2713 of 2006
In SPECIAL CIVIL APPLICATION No. 1969 of 2006
With
CIVIL APPLICATION No. 7753 of 2006
In SPECIAL CIVIL APPLICATION No. 1969 of 2006
With
CIVIL APPLICATION No. 9341 of 2006
In SPECIAL CIVIL APPLICATION No. 12209 of 2006
To
CIVIL APPLICATION No. 9343 of 2006
In SPECIAL CIVIL APPLICATION No. 12866 of 2006
With
CIVIL APPLICATION No. 9345 of 2006
In SPECIAL CIVIL APPLICATION No. 12869 of 2006
To
CIVIL APPLICATION No. 9348 of 2006
In SPECIAL CIVIL APPLICATION No. 12872 of 2006
With
CIVIL APPLICATION No. 10079 of 2006
In SPECIAL CIVIL APPLICATION No. 12867 of 2006
With
CIVIL APPLICATION No. 8740 of 2006
In SPECIAL CIVIL APPLICATION No. 13826 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RADHESHYAM B.ED. COLLEGE THROUGH RASIKBHAI SHUKLA - Petitioner(s)

Versus

COMMISSIONER OF HIGHER EDUCATION & 3 - Respondent(s)

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Appearance :

Special Civil Application No.12240/06 to 12244/06
MR ND NAVANATI-SR ADVOCATE WITH MR MITUL K SHELAT for Petitioner(s) : 1,
MR SIRAJ GORI AGP for Respondent(s) : 1,
MR JR NANAVATI for Respondent(s) : 2,
MR AD OZA WITH MR DIPAK R DAVE for Respondent(s) : 3,
MR PK JANI, for Respondent(s) :4.

Special Civil Application No.12866/06 with Special Civil Application No.12867/06 with SCA 12869 to 12872/06
MR SHIRISH JOSHI for Petitioner(s) :1,
MR AD OZA WITH MR DIPAK R DAVE for Respondent(s) : 1,
MR SIRAJ GORI AGP for Respondent(s) : 2,
MR DC DAVE for Respondent(s) : 3,
MR PK JANI for Respondent(s) : 4.

Special Civil Application No.13888/06 with SCA No.13889/06
MR AJ SHASTRI for Petitioner(s) :1,
Rule served to Respondent(s) : 1.

Special Civil Application No.12209/06 with SCA No.12210/06
MR SHIRISH JOSHI for Petitioner(s):1,
MR AD OZA WITH MR DIPAK R DAVE for Respondent(s):1,
MR SIRAJ GORI AGP for Respondent(s):2,
RULE SERVED to Respondent(s) :3,
MR PK JANI for Respondent(s): 4.

Special Civil Application No.13833/06 with SCA No.13826/06
MR HJ NANAVATI for Petitioner(s):1
MR SIRAJ GORI AGP for Respondent(s):1 ,2
MR PK JANI for Respondent(s) : 3

Special Civil Application No.13025/06
MR HJ NANAVATI for Petitioner(s):1
MR SIRAJ GORI AGP for Respondent(s):1,
MR AD OZA WITH MR DIPAK R DAVE for Respondent(s) : 4
RULE SERVED to Respondent(s):2,3
DS affidavit not filed for Respondent(s):5,

Special Civil Application No.1969/06
MR MRUGEN PUROHIT for Petitioner(s):1,
MR AD OZA WITH MR DIPAK R DAVE for Respondent(s):1,
MR SIRAJ GORI AGP for Respondent(s) : 2,
MRS VD NANAVATI for Respondent(s):3,
MR JR NANAVATI for Respondent(s):4,
MR DC DAVE for Respondent(s):5,

Civil Application No. 2713/06
MR MRUGEN PUROHIT for Applicant (s):1,
MR AD OZA WITH MR DIPAK R DAVE for Respondent(s):1,
MR SIRAJ GORI AGP for Respondent(s) : 2,
MRS VD NANAVATI for Respondent(s):3,
MR JR NANAVATI for Respondent(s):4,
MR DC DAVE for Respondent(s):5,

Civil Application No. 7753/06
MR DR DAVE for Applicant(s):1
MR MRUGEN PUROHIT for Respondent(s):1,
MR SIRAJ GORI AGP for Respondent(s) : 2,
MR DC DAVE for Respondent(s):3,
MRS VD NANAVATI for Respondent(s):4,

Civil Application No. 9341/06 to 9343/06 with Civil Application No. 9345/06 to 9348/06
MR SHIRISH JOSHI for Applicant(s):1,
MR AD OZA WITH MR DIPAK R DAVE for Respondent(s):1,

Civil Application No. 10079/06
MR SHIRISH JOSHI for Applicant(s):1,
MR AD OZA WITH MR DIPAK R DAVE for Respondent(s):1,
MR SIRAJ GORI AGP for Respondent(s):2,
MR DC DAVE for Respondent(s):3,
MR PK JANI for Respondent(s):4.

Civil Application No. 8740/06
MS ROOPAL R. PATEL for Applicant(s):1,
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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 30/08/2006

ORAL JUDGMENT

1. In this group of petitions, since common

questions of law arises, despite minor factual differences, these petitions have been heard together and are being disposed of by this common order.

2. At the outset, it may be clarified that this order does not dispose of Special Civil Application No.1969/2006, Civil Application No.2713/2006 and Civil Application No.7753/2006, since certain issues which are not common in the rest of the petitions need to be adverted to before final order can be passed. The said petition therefore, shall be notified for final hearing on 20-9-2006 along with Civil Applications.

3. The litigation arises in the following factual background.

4. Gujarat State Unaided B.Ed/B.P.Ed college Management Association had filed Special Civil Application No.1969/2006 before this Court challenging inter-alia a communication/decision dated 22-12-2005 of the respondent no.1-Committee Justice R.J. Shah Fee and Admission

Committee (here-in-after referred to as “the Committee”). By the said decision, respondent no.1-Committee was pleased to declare that the petitioner-Association despite clear cut directions not to enroll students whose names appeared in the merit list of Association, continued to ignore the Committee's directions. Committee also noted that further advertisements were released by the Committee indicating that students should not join the institution. The Committee had concluded that Association had failed to establish genuineness of the Common Entrance Test. In the result, the Committee declared that the test conducted by the Association on 12-6-2005 is not genuine and that therefore, no further procedure shall be made in furtherance of the said merit list. The Committee also decided to inform the State Government separately regarding the criminal investigation and prosecution against the Association and its members regarding mala fide action on their part.

4.1 Learned Single Judge of this Court while admitting the said petition on 28-3-2006,

made certain observations and gave certain directions. Learned Judge was prima facie of the opinion that the Committee has not approved the action of preparation of the merit list on the basis of so called Entrance Test. Learned Judge was also of the opinion that such test was required to be conducted under the supervision of the Committee. The members of the petitioner-Association despite full knowledge, in the opinion of the Committee, committed large number of manipulations and only made a show of having conducted examination. The admissions were granted to the students leading them to believe that the Common Entrance Test is lawfully held. Learned Judge found that there was no material to establish that the students were informed about the conducting of the examination under the supervision of the Committee. Learned Judge also came to the prima facie conclusion that concerned students bona fide took admissions and College management collected fees for the same. On the other hand, University has not granted enrollment to such students due to the decision of respondent no.1-Committee. It was observed that though the

Committee has intimated to the State authorities illegalities committed while granting admission, the State authorities have not taken any action against the college management either of de-recognizing the institution or other-wise. It was observed that if the students are made to believe that Common Entrance Test is lawfully held and are duped for extracting the fees by giving admission, same prima facie results into playing fraud with the career of the students, same also amounts to offence of cheating. In the background of these observations, Learned Single Judge gave following directions :

"4. In view of the above, I am inclined to pass the following order:
(a) **RULE**

(b) Respondents No3, 4, and 5 shall provisionally grant enrollment to the students concerned and would also allow them to appear at the examination subject to the final order which may be passed by this Court in this petition and on condition that the concerned college which is the Member of petitioner Association deposits 50% of the amount already collected from the students concerned, as fees and other expenses, with this Court. After the amount is deposited and the receipt is produced, the University will grant provisional enrollment to the students concerned of the concerned College.

(c) It is further directed that Respondent No.2 Commissioner of Higher Education shall examine the matter for initiating the proceedings for de-recognition of the concerned college for granting admission to the students on the basis of so-called

CET which is not approved by the Respondent No.1 Committee and if ultimately it is found that there is a case for de-recognition of the Institution after giving opportunity of hearing to the concerned College, appropriate action in accordance with law for de-recognition or otherwise shall be taken.

(d) The Commissioner of Higher Education, Respondent No.2 herein shall also hold an inquiry for examining as to whether any cheating has taken place with the students of the college concerned and whether any fraud is played by the Management of the College concerned with the students who are admitted in B.Ed., course on the basis of so-called CET. The aforesaid inquiry shall be completed within a period of two months from today and if it is ultimately prima facie found that the offence of cheating or any other offences are committed by the person concerned in-charge of the Management of the College concerned, the criminal prosecution(s) shall also be lodged against the concerned person immediately, but not later than a period of one month thereafter. It is made clear that in the event any aforesaid action is taken by the Commissioner of Higher Education, either of holding inquiry or of filing criminal prosecution or police complaint, as the case may be, the rights and contentions of the person concerned/accused, as may be permissible in law, shall remain open.

(e) The report of the compliance of the earlier directions shall be submitted within a period of three months from today."

5. Pursuant to the said order passed by Learned Single Judge, the authority including the State Government had taken certain actions against Educational Institutions which have given rise to further litigation in the form of filing of the above mentioned petitions.

6. In the group of petitions being Special Civil

Application Nos. 12240/2006 to 12244/2006, the petitioners have challenged a decision dated 23-6-2006 of the State Government by which the State Government conveyed to the Vice Chancellor of the Bhavnagar University about its decision to cancel the NOC of the concerned institutions who were the petitioners before this Court.

6.1 The communication inter-alia states that the Common Entrance Test was conducted on 12-6-2005 by the Association. Such test was conducted without the supervision of the Committee which has been declared illegal. Despite wide publicity in newspapers, admissions were granted to the students. It therefore, prima facie appears that the institutions knowing fully about the illegality of the procedure have granted admissions and collected fees from the students. The State Government has therefore, decided to cancel NOC granted in favour of such institutions and National Council for Teachers' Education, Bhopal, (NCTE for short) is also being intimated about the same for cancellation of recognition.

6.2 It is the case of the petitioners that action taken by the Government is wholly unauthorised, impermissible under the law and in violation of principles of natural justice. It is contended that pursuant to said communication, respondents were not allotting the students to the educational institution namely B.Ed. College run by the petitioners. It is contended that the State Government has not passed any order cancelling NOC.

6.3 In the said group of petitions though no affidavit in reply has been filed by the State, on behalf of the Committee, a detailed reply dated 26-7-2006 came to be filed.

6.4 This Court on 28-6-2006 issued notice in the said group of petitions. Eventually, by a common order dated 28-7-2006 while admitting the said group of petitions and certain other similar petitions, this Court gave short reasons for consideration of question of interim relief and passed the following order :

“In Special Civil Application No.1969/06 learned Single Judge of this Court on 28/3/2006 found prima-facie that the petitioners had indulged

into irregularities in conduct of common entrance test for granting admissions to students in the B.Ed colleges. The learned Judge, therefore, while admitting the petition, by way of interim direction protected the interest of the students who were already admitted and provided that they shall be granted provisional enrollment. Simultaneously, the learned Judge required the Commissioner of Higher Education to examine the matter of initiating the proceedings for de-recognition of the concerned college for having granted admissions to the students on the basis of the so called C.E.T which was not approved by the R.J.Shah Committee (committee for short). It was provided that if ultimately it is found that there is a case of de-recognition of the institution, after giving opportunity of being heard to the concerned college, appropriate action in accordance with law for de-recognition or otherwise shall be taken.

4.1. Pursuant to this direction, the Government has taken action which has given rise to this group of petitions.

4.2. Since in material aspects facts are similar in all petitions if one adverts to the facts as stated in Special Civil Application No.12240/06, it can be seen that a show cause notice came to be issued to the petitioner on 13th June, 2006 calling upon the petitioner to respond personally on 20th June, 2006. It is stated in the show cause notice that for having committed serious irregularities action is proposed to be taken. Pursuant to the said show cause notice the representatives of the petitioner remained present and participated in the hearing. An order came to be passed on 23rd June, 2006 stating that steps were taken by the petitioner for enrollment of students though knowing through newspaper reports that tests were not regular. The Director of Higher Education, therefore, stated in his order that the Government has decided to cancel the NOC pursuant to which the affiliation given by the

University also is liable to be cancelled and recognition is also to be cancelled by NCTE, Bhopal for which a communication is also sent.

4.3. It is true that prima-faice this Court has found some justification in the allegations against the petitioners for having committed irregularities in conduct of C.E.T and granting admissions to the students despite warning by the committee. However, the power of cancellation of recognition lies with NCTE. The Director of Higher Education or the Government has not filed affidavit pointing out that either the Government has cancelled the NOC or that the University has cancelled the affiliation or that the NCTE has cancelled the recognition. No provision has been pointed out to show that there is any power for suspension of either the recognition or affiliation. It is also doubtful whether once NOC is granted pursuant to the recognition granted by NCTE, whether the Government can recall the same. The primacy of NCTE in recognising such institutions has been recognised by the Hon'ble Supreme Court in the case of State of Maharashtra vs. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya & Ors. reported in 2006 AIR SCW 2048.

4.4. It may also be noted that though this Court passed the said order on 28th March, 2006, the show cause notice was issued by the Government only on 13th June, 2006 by which time substantially process of granting admission to the new academic term had been completed and large number of students were already admitted by the institutions for the current academic term. Eventually, the order was passed on 23rd June, 2006 by which time some more students were admitted.

5. Considering all these aspects of the matter, I find that it would not be possible to withhold granting of admissions to the remaining number of students to these colleges atleast for current academic term. Any other view would amount to suspending the

recognition/affiliation/NOC which admittedly in the present case has not been done. The Government has already corresponded with NCTE requesting for cancellation of recognition. So far no steps appear to have been taken.

6. Under the circumstances the respondents are directed to allot students provisionally in the B.Ed college of the petitioners to the extent of deficiencies in the current academic year. The institutions shall grant admissions to such students provisionally making it clear that the same is subject to further order that may be passed by this Court.

7. I cannot close this order without observing that in such cases NCTE has to be vigilant and take appropriate steps expeditiously. One wonders whether one single body has the wherewithal or machinery to oversee large number of institutions all over the country. This and other connected questions shall have to be borne out only at the stage of final hearing.

8. Needless to say this Court has not expressed any opinion on the question of cancellation of recognition of the petitioners by NCTE and pendency of the petitions will not be construed as any fetter in exercise of powers if found necessary independently."

7. Special Civil Application Nos. 12866/2006, 12867/2006, 12869/2006 to 12872/2006 have been filed by the petitioners challenging the orders dated 20-6-2006 and 23-6-2006 passed by the Commissioner of Higher Education. By the impugned orders and particularly by impugned communication dated 23-6-2006, the Director of

Higher Education conveyed to the Sardar Patel University, Vallabh Vidhyanagar that the admissions granted by the petitioners pursuant to the Entrance Test conducted on 12-6-2005 were illegal. Such admissions were granted despite full knowledge that the Entrance Test is not valid. For the said irregularities steps will be taken. In the meantime the State Authority has decided to cancel the NOC of the institutions and also conveyed to the NCTE to cancel recognition of such institutions. The University therefore, should not allot the students to such institution for the academic year 2006-2007.

7.1 The stand of the petitioners herein also is similar to the earlier group of petitions namely that the impugned communications are illegal and unlawful. The same are passed without authority of law and are in breach of principles of natural justice. That communication dated 23-6-2006 is not even endorsed to the petitioners and in any case it is not open for the State Government to suspend or cancel the recognition of the petitioners and to refuse to allot the students to the extent of

intake capacity

7.2 In the said group of petitions, affidavit in reply dated 18-7-2006 came to be filed on behalf of the Committee.

7.3 The stand of the State Government in the present case as was in the previous group of petitions is that the concerned Educational Institutions are involved in large number of irregularities; that they have granted admission to the students despite a warning from the Committee that Common Entrance Test is not valid. There were certain other allegations also against the said institutions which require taking of steps against them. It was submitted that NCTE, Bhopal is also approached for the cancellation of recognition of the concerned colleges.

7.4 On 5-7-2006, this Court had issued notice in the said group of petitions. Ultimately while admitting the petitions on 28-7-2006, this group of petitions were also made a part of the interim directions which have been

noted here-in-above.

8. In Special Civil Application No. 13025/2006, the petitioners have challenged similar communication dated 20-6-2006 and 23-6-2006 on similar lines. The said petition is also covered under the interim order dated 28-7-2006.

9. In petitions being Special Civil Application No.13888/2006 and 13889/2006, the petitioners have challenged the decision of the respondents in excluding the petitioners' colleges from the purview of the Central Admission System in the PTC Course. Affidavit in reply has been filed on behalf of the State Government in these petitions contending inter-alia that there were large scale complaints against the management of the petitioners-institutions. The students have complained and made allegations about the irregularities and manipulations being committed by the management. Such allegations include non payment of scholarship, taking forcibly signatures of the students in the receipt books, charging of excess amounts towards examination fees and such other malpractices being committed

by the Trustees. It was on account of these allegations that it was found inappropriate to allot students to the petitioners for the current academic year. This Court had issued notice on 19-7-2006 and following the interim order passed in similar group of petitions on 1-8-2006, this Court by way of interim directions, directed the respondents to allot sufficient number of students to the petitioners for its PTC college as per rules. It was provided that such allotments shall be provisional and subject to outcome of the petitions. It was further provided that the petitioners while granting admission to the students shall specify that the admissions are purely provisional and will be subject to further orders that may be passed in these petitions.

9.1 In these petitions also, it is contended on behalf of the petitioners that the respondents cannot act on unverified allegations and in any case, the State Government has no authority to suspend the allotment of the student of the colleges run by the petitioners as long as its recognition by the NCTE is in

force.

10. In Special Civil Application Nos. 12209/2006 and 12210/2006, the petitioners had challenged communications dated 20-6-2006 and 23-6-2006 by virtue of which the Commissioner of Higher Education had conveyed to the University that on account of involvement of the petitioners in granting admissions to unauthorised students pursuant to a so called Entrance Test, the colleges concerned may not be allotted students for the current academic year. These petitions have been covered by the interim order dated 28-7-2006 passed by this Court.

11. In Special Civil Application No.13826/2006 and 13833/2006, the petitioners have challenged excluding the petitioner college from the procedure of allotment of students for PTC course for the academic year 2006-2007 without de-recognition by NCTE.

11.1 The stand of the respondents in the said petition was that the petitioners were facing serious allegations of malpractice and

that therefore, it was not found appropriate to allot students for admission to the colleges. This Court had by way of order dated 1-8-2006, granted interim protection to the petitioners and gave direction to allot sufficient number of students. This Court made following observations in the order :

"10. Considering all these aspects of the matter, I find that the impugned action of the Government is required to be stayed. Permitting the respondents not to allot students would amount to temporary or permanent suspension of recognition of the college.

11. It may be noted that there are allegations though so far not yet established by bi-parte hearing of certain irregularities having been committed by the management. Such allegations need to be examined promptly, an appropriate action in accordance with law should be taken by the appropriate authority. Learned AGP Shri Gori stated that the Government is in the process of bringing these aspects to the notice of NCTE. If so done, it is expected that the NCTE shall initiate appropriate action promptly.

12. In the result, by way of interim directions, respondents are directed to allot sufficient number of students to the petitioners for its PTC colleges as per rules. Such allotment shall be provisional and subject to outcome of these petitions. The petitioners while granting admission to the students shall specify that the admissions are purely provisional and will be subject to further orders that may be passed in these petitions."

12.Civil Application No.8740/2006 in Special Civil Application No.13826/2006 has been filed seeking permission to join as party respondent in the main petition. The stand of the applicants herein is that the petitioner has no authority to file the petition since the petitioner is not authorised to act on behalf of the trust. I have not examined the question of the control of the trust and it would be open for the applicant to urge all these issues before the Charity Commissioner and/or NCTE or any other authority.

13.Civil Applications No.10079/2006, 9341/2006, 9342/2006, 9343/2006, 9345/2006, 9346/2006, 9347/2006, 9348/2006 have been filed by the individual Educational Institutions seeking directions against the concerned authority to declare results of the student who have appeared in the B.Ed examination held in the month of April/May 2006 with a permission to such students upon clearing of the examination to pursue their further studies. These applications have been filed since this Court in Special Civil Application No.1969/2006 granted limited

respite to the concerned students in the form of continuing their admissions granted by concerned educational institutions.

14. In so far as the impugned actions of the respondent authorities challenged in all the petitions are concerned, it can be seen that by various methods, eventually what was achieved by the respondents was to prevent the educational institutions from granting admission to the students from the current academic year. These institutions run PTC and B.Ed. Colleges. They have valid recognition from NCTE. They also have NOC from the Government and affiliation from the concerned Universities. It is not the case of the respondents that at any stage either the affiliation was cancelled or recognition or NOC recalled. In view of the fact that all the educational institutions were enjoying valid affiliation, recognition and NOC, it was not possible for the respondents to refuse to allot the students for current academic year.

15. In any case, the action taken by the State Government and Universities was without

affording any opportunity to the petitioners of being heard. At no stage, the State Government had put the petitioners to notice that NOC is liable to be cancelled nor the concerned Universities had ever put the petitioners to notice that their affiliation is under consideration for being recalled for their alleged involvement in irregularities. In any case admittedly, NCTE has never cancelled recognition of the institutions. Combined effect of these two factors namely non hearing of the petitioners before taking adverse action and non cancellation of NOC, affiliation and recognition by the respective bodies is that it is not possible for the respondents to take any steps which would eventually preclude the petitioners from giving admissions to the eligible students.

16. Though respondents were acting under the observations made by this Court in its order dated 28-3-2006 passed in Special Civil Application No.1969/2006, at no stage however, this Court had in the said order or any other order indicated that action be taken without following the principles of natural justice or

that admissions can be stalled without cancellation of NOC, affiliation and recognition.

17. For grant and cancellation of recognition to such educational institutions, Legislature has enacted the Act called the National Council for Teacher Education Act, 1993(here-in-after referred to as “the said Act”).

Section 3 of the said Act envisages establishment of the Council.

Section 12 of the said Act provides for functions of the Council. Same inter-alia provides that it shall be the duty of the Council to take all such steps as it may think fit for ensuring planned and co-ordinated development of teacher education and for the determination and maintenance of standards for teacher education and for the purposes of performing its functions. The Council may undertake several tasks including that of laying down guidelines in respect of minimum qualifications for a person to be employed as a teacher in schools or in recognised

institutions, laying down norms for any specified category of courses or trainings in teacher education including the minimum eligibility criteria for admission thereof, and the method of selection of candidates, duration of the course, course contents and mode of curriculum.

Section 14 of the said Act pertains to recognition of institutions offering course or training in teacher education. Section 14 reads as follows :

“14. Recognition of institutions offering course or training in teacher education.-(1) Every institution offering or intending to offer a course or training in teacher education on or after the appointed day may, for grant of recognition under this Act, make an application to the Regional Committee concerned in such form and in such manner as may be determined by regulations;

Provided that an institution offering a course or training in teacher education immediately before the appointed day, shall be entitled to continue such course or training for a period of six months, if it has made an application for recognition within the said period and until the disposal of the application by the Regional Committee.

(2) The fee to be paid along with the application under sub-section(1) shall be such as may be prescribed.

(3) On receipt of an application by the Regional Committee from any institution under sub-

section(1), and after obtaining from the institution concerned such other particulars as it may consider necessary, it shall,-

(a) if it is satisfied that such institution has adequate financial resources, accommodation, library, qualified staff, laboratory and that it fulfills such other conditions required for proper functioning of the institution for a course or training in teacher education, as may be determined by regulations, pass an order granting recognition to such institution, subject to such conditions as may be determined by regulations; or

(b) if it is of the opinion that such institution does not fulfill the requirements laid down in sub-clause(a), pass an order refusing recognition to such institution for reasons to be recorded in writing;

Provided that before passing an order under sub-clause(b),the Regional Committee shall provide a reasonable opportunity to the concerned institution for making a written representation.

(4) Every order granting or refusing recognition to an institution for a course or training in teacher education under sub-section(3) shall be published in the Official Gazette and communicated in writing for appropriate action to such institution and to the concerned examining body, the local authority or the State Government and the Central Government.

(5) Every institution, in respect of which recognition has been refused shall discontinue the course or training in teacher education from the end of the academic session next following the date of receipt of the order refusing recognition passed under clause(b) of sub-section(3).

(6) Every examining body shall, on receipt of the order under sub-section(4)-

(a) grant affiliation to the institution, where recognition has been granted; or
(b) cancel the affiliation of the institution,

where recognition has been refused."

Section 15 of the said Act pertains to Permission for a new course or training by recognised institution.

Section 16 of the said Act provides inter-alia that notwithstanding anything contained in any other law for the time being in force, no examining body shall, on or after the appointed day grant affiliation to any institution or hold examination, for a course or training conducted by a recognised institution, unless the institution concerned has obtained recognition from the Regional Committee concerned, under section 14 or permission for a course or training under section 15 of the said Act.

Section 17 of the said Act provides for contravention of provisions of the Act and consequences thereof. It inter-alia envisages withdrawal of the recognition. Section 17 of the said Act reads as follows :

"17. Contravention of provisions of the Act and consequences thereof.-(1) Where the Regional Committee is, on its own motion or on any representation received from any person,

satisfied that a recognised institution has contravened any of the provisions of this Act, or the rules, regulations orders made or issued thereunder, or any condition subject to which recognition under sub-section(3) of section 14 or permission under sub-section(3) of section 15 was granted, it may withdraw recognition of such recognised institution for reasons to be recorded in writing;

Provided that no such order against the recognised institution shall be passed unless a reasonable opportunity of making representation against the proposed order has been given to such recognised institution:

Provided further that the order withdrawing or refusing recognition passed by the Regional Committee shall come into force only with effect from the end of the academic session next following the date of communication of such order.

(2) A copy of every order passed by the Regional Committee under sub-section(1),-
(a) shall be communicated to the recognised institution concerned and a copy thereof shall also be forwarded simultaneously to the University or the examining body to which such institution was affiliated for cancelling affiliation; and
(b)shall be published in the Official Gazette for general information.

(3) Once the recognition of a recognised institution is withdrawn under sub-section(1), such institution shall discontinue the course or training in teacher education, and the concerned University or the examining body shall cancel affiliation of the institution in accordance with the order passed under sub-section(1), with effect from the end of the academic session next following the date of communication of the said order.

(4) If an institution offers any course or training in teacher education after the coming into force of the order withdrawing recognition under sub-section(1), or where an institution

offering a course or training in teacher education immediately before the appointed day fails or neglects to obtain recognition or permission under this Act, the qualification in teacher education obtained pursuant to such course or training or after undertaking a course or training in such institution, shall not be treated as a valid qualification for purposes of employment under the Central Government, any State Government or University, or in any school, college or other educational body aided by the Central Government or any State Government.

Any person aggrieved by an order that may be passed under Section 14 or Section 15 or Section 17 of the said Act has been given right to appeal to the Council under section 18 of the said Act.

Section 20 of the said Act provides for Regional Committees and divides country into four zones namely

(i) the Eastern Regional Committee;

(ii) the Western Regional Committee;

(iii) the Northern Regional Committee;

(iv) the Southern Regional Committee.

18. The National Council for Teachers Education has also formulated Regulations in exercise of powers conferred under the said Act by a

notification dated 13-11-2002. These Regulations are called the NCTE(Form of application for recognition, the time limit of submission of application, determination of norms and standards for recognition of teacher education programmes and permission to start new course or training) Regulation, 2002. These regulations shall be here-in-after referred to as “the said regulations”).

19. Regulation 6(i) of the said Regulations envisages requirement of No Objection Certificate from the State Government, from every institution seeking recognition to start a course or training in teacher education.

19.1 Sub-regulation(ii) of Regulation-6 of the said Regulation however, provides that the endorsement of the State Government in regard to issue of No Objection Certificate would be considered by the Regional Committee while taking a decision on the application for recognition.

19.2 The above-mentioned provisions

contained in the said Act and regulations made therein have been interpreted by various Courts in different contexts.

20. Learned Single Judge of this Court in a decision dated 16-08-2005 passed in Special Civil Application No. 15598/2005 held that any institution granted recognition by the NCTE cannot be refused affiliation on the ground that it did not have NOC of the State Government.

20.1 In a decision dated 20-7-2005 rendered by the learned Single Judge in Special Civil Application No. 12168/2005 held that the direct consequences of the impugned order i.e. not to give admissions in the PTC college run by the petitioner-trust tantamounts to withdrawal of recognition or suspension of recognition which powers vests only with NCTE.

20.2 Division Bench of this Court in Letters Patent Appeal No.1571/2005 and connected matters, made following observations :

“These appeals are a classic example indicating how failure / inability of the system to provide for a mechanism to resolve differences between two public

authorities over an issue of vital public importance (and reluctance on part of the Courts in playing the role of a catalyst by timely and positive judicial intervention at a critical juncture) can result not only into avoidable multiplicity of litigation but also criminal waste of precious national resources. The wastage of manpower and infrastructure, if allowed, would have further delayed achievement of the goal embodied in Article 21A and 45 of the Constitution for providing free and compulsory education to all the children in the age group of 6 to 14 years."

20.3 Division Bench thereafter, taking note of decision of Hon'ble Supreme Court in the case of St. Johns Teachers Training Institute vs. Regional Director, NCTE reported in AIR 2003 SC 1533 found that with respect to the question of assessment of need and other relevant requirements for development of teachers education system, there should be meaningful dialogue between the State Government and NCTE. In the concluding portion of the judgement it was therefore, observed that :

"II. Apart from the aforesaid directions being granted in the facts of the present case, the Court cannot help observing that the State Government and the Director of Primary education on one hand and the Regional Committee, NCTE, Bhopal on the other hand, shall make endeavour to make assessment of the need for trained primary teachers in the State of Gujarat for future academic years and the

NCTE shall accordingly consider the applicants for recognition for opening the new PTC colleges or permission to open additional classes in the existing PTC colleges and the admission process shall be completed every year as per the Schedule indicated in this judgment, subject to any variations which may be made upon consensus being reached by the above authorities or subject to any statutory regulations which may be framed in this behalf by the competent authority. “

20.4 Hon'ble Supreme Court in the case of St. Johns Teachers Training Institute vs. Regional Director, NCTE(supra) harmonised various provisions made in the said Act and the said Regulations.

20.5 In the case of State of Maharashtra v. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya reported in 2006 SCW 2048, Hon'ble Supreme Court recongnised primacy in the question of grant of recognition to educational institutions imparting training in teachers education.

21. Considering all these aspects of the matter and reverting back to the facts of the present case,

it can be seen that the action initiated by the respondents was lacking any authority. At no stage, the State Government or concerned University had cancelled the NOC or affiliation and the recognition granted by NCTE was in force. In any case any action that was taken was without hearing the petitioners. The actions were based on allegations which had to be verified after by-parte hearing. Considering all these aspects of the matter, I have no choice but to strike down the actions.

22. Civil Applications have been filed by the institutions seeking directions for declaration of results of the students. These students were admitted by the institutions initially pursuant to the so called Entrance test conducted by the Association on 12-6-2005. Though the Committee found that the Entrance test was not properly held and that admissions were required to be granted, learned Single Judge of this Court by an order passed on 28-3-2006 granted relief in favour of the students concerned by protecting their admissions. It was provided that the Universities shall provisionally grant

enrollment to such students and would also allow to appear in final examination subject to final order that may be passed by this Court. Learned Judge further provided that same would be on the condition that Association shall deposit 50% of the amount already collected from the students as fees and other expenses with the Court. Only after such deposit is made, University was to grant provisional enrollment to the students. There was a strong undercurrent in the order to inquire further into the alleged misconducts of the Association and its constituent members and at the same time to safeguard the career of the students, who as per prima facie view of the Court, bona fide took admissions in the college. The academic term is since over. The students have taken training in the concerned courses. They have also appeared in the examination conducted by the University as permitted by this Court. No useful purpose would be served in withholding their results. Ultimate outcome of the litigation and its possible adverse effects on educational institutions need not detain this Court in granting relief prayed for in Civil Applications. Delaying further the declaration

of results would also result in further harassment to the students. These students have faced uncertain time and hanging sword through out their term in these courses. They can at-least be spared of further ambiguity and uncertainty. No material was placed before this Court to examine that particular students were party to any fraud or manipulation for getting admissions.

23. Considering all these aspects of the matter, Civil Applications are required to be allowed. Consequential directions for declaring the results of the students would follow.

24. Before parting, certain aspects of the matter cannot be lost sight of. The petitioners are facing serious allegations. These allegations include those of malpractices in conduct of examination for granting of admission. Some of the institutions are facing allegations of charging excess fees from the students, of manipulating the records. Some trustees are also facing criminal prosecution in certain cases. This Court has not expressed any opinion

on the veracity of these charges. Such charges however, cannot remain un-investigated for too long. It is in the interest of clean administration of imparting education that such charges are investigated with due promptness and necessary conclusions reached at the earliest. If the allegations are baseless, institutions would have a right to receive a clean chit. On the other hand if there is any worth in the allegations, consequential steps must be taken by the authority at the earliest. It is only in this manner that the purity of administration of education can be maintained. Despite such controversies and despite serious allegations being made against the petitioners and despite learned Single Judge of this Court highlighting some of these aspect of the matter in his order dated 20-3-2006, apparently no steps were taken by NCTE to consider whether the allegations were valid or not.

25. As noted earlier primacy has been granted to NCTE in the question of granting or withdrawing the recognition. It is therefore, all the more responsibility of NCTE to act with promptness

and to take appropriate decision in face of such allegations. This Court therefore, during the course of earlier hearing had detailed discussion with the learned advocates appearing for the parties. From the experience of the present group of petitions, it was felt that sufficiently prompt steps were not being taken by the NCTE despite some of the issues being brought to its notice. Learned AGP Shri Siraj Gori had submitted that the State Government has brought to the notice of NCTE nature of allegations that petitioners are facing.

26.On 10-8-2006, this Court therefore, raised four questions by passing the following order :

“1. In this group of petitions certain issues of considerable importance are common. These petitions are, therefore, being heard together.

2. Against the educational institutions imparting education in PTC/B.Ed by the petitioners certain serious complaints have been received by the State Government/The Fee and Admission Committee. The questions that are needed to be gone into while deciding these petitions which are as follows:

1. What is the machinery set up by NCTE for periodic inspection of the institutions recognized by it.
2. In what manner does the NCTE inquire into allegations of irregularities or

such similar deficiency in such institutions if received directly by NCTE.

3. What is the nature of power that the State Government or the Fee Committee or the University would enjoy in carrying out inspection of such institutions. If any report is made by any of these bodies of the NCTE, what are the steps taken by the NCTE.
4. In the present group of cases what steps the NCTE has taken so far upon reports which have been received indicating prima-faice material suggesting irregularities having been committed by such institutions.

3. NCTE shall supply necessary material to enable this Court to examine above questions by filing an affidavit in reply by next date of hearing i.e. 24th August, 2006. Pendency of these petitions will not come in way of the NCTE from proceeding further in accordance with law."

27. As noted earlier, NCTE is sub divided into four zones. State of Gujarat falls under the Western Zone and administration is entrusted to the Western Regional Committee of NCTE. At the request of Court, learned advocate Shri P.K. Jani had made available the data of number of institutions in the western region which the Western Regional Committee of NCTE is overlooking. Accordingly, following data emerges :

States	**Institutions**	**Intake**
Gujarat	661	43064
Maharashtra	1013	68993
Madhya Pradesh	442	38405

Chhattisgarh	85	6950
Goa	7	545
Daman & Diu	2	110

28. From the above, it can be seen that hundreds of educational institutions imparting education in teachers training courses are being overseen by Western Regional Committee of NCTE. These institutions are spread out over a large area comprising of large States such as Maharashtra, Gujarat, Madhya Pradesh, Chhattisgarh, Goa,etc. The task on hand before the Committee is enormous. It would therefore, be impossible to closely monitor and examine large number of complaints that may be received against various institutions from various quarters. This Court had therefore, suggested some modality so that NCTE can effectively examine such complaints and come to conclusions promptly. Pursuant to such discussion and in response to order dated 10-8-2006 of this Court, Western Regional Committee of NCTE in its meeting dated 23-8-2006 has taken certain important decisions.

29. This has been outlined by NCTE in its affidavit in reply date 22-8-2006. In the said affidavit

it is stated inter-alia that :

“5. That the working system of WRC is that all applications for grant of recognition/permission are received by its office in Manas Bhawan, Shyamla Hills, Bhopal. Similarly, all complaints and letters of request for the withdrawal of recognition/permission are also received by the above office. When the office finds that the applications and complaints are supported with requisit documentary proof, they are placed before the WRC which consists of 6 experts in the matters relating to teacher education and one State Representative from each of the States/UTs. The WRC meets atleast once in a month.

6. That, if the WRC accords its satisfaction that the applications/complaints are supported with requisit documentary proof, the claims are sent for physical verification by experts' team of two persons. At present there are 167 such experts. These experts were selected out of the Professors, Readers, Lecturers etc. employed in various Govt. and Govt. Aided colleges. They are paid honorarium as per rules. Similarly the Chairperson and Members of WRC are paid honorarium as per rules.

7. That the permanent staff of WRC consists of one Regional Director of the rank of Dy. Secretary, one Under Secretary, one Section Officer, one Junior Accounts Officer and other ministrial staff. As stated earlier, the main function of verification of physical and instructional infrastructure of institutions and the decision on the reports of verification lies with non-employees of NCTE who are treated as impartial experts in the field of teacher education.

8. That the policy so far adopted by WRC in the matters relating to withdrawal of recognition/permission had been to initiate the action u/s 17(1) of the NCTE Act by issuing the show cause notice on the basis of complaint and the material obtained from State Governments and Universities. Private complaints are not entertained as they are large in number and are

not supported with documentary proofs. The WRC had been of the opinion that it can initiate action u/s 17(1) of the NCTE Act only after arriving at the "satisfaction on the basis of material" that the institution concerned had contravened the provisions of the NCTE Act, NCTE Rules, NCTE Regulations and the orders issued thereunder.

9. That in the matter of withdrawal of recognition/permission u/s. 17(1) of the NCTE Act, the NCTE has no power to frame regulations u/s. 32 of the NCTE Act. Thus, section 17(1) of the NCTE Act is the complete code on powers and procedure for the withdrawal of recognition/permission. The WRC had been of the opinion that section 17(1) of the NCTE Act had no scope for periodical inspection of recognised institution to find the necessary material for arriving at the requisit satisfaction u/s 17(1) of the NCTE Act. "

29.1 It is further stated that :

"11- That in view of the above, the submissions of NCTE on the four questions framed by the Hon'ble Court, vide orders dated 10-8-2006, are as under :-

REGARDING QUESTION NO.1 :- The NCTE has not set up the machinary for the periodical inspection of recognised institution. The WRC has now been advised to take a decision and to evolve a policy for the periodical inspection of all institutions recognised by it. Such decision shall be taken in the 87-th meeting of WRC scheduled on 23-8-2006. The Hon'ble Court shall be informed of such decision at the time of hearing of the case on 24-8-2006.

REGARDING QUESTION NO.2 :- The NCTE had been taking cognizance of only such complaints received directly as were supported with necessary documentary proof of contraventions of NCTE Act, NCTE Rules, NCTE Regulations and orders issued thereunder, by recognised institutions. So far the WRC did not receive any such complaint from private persons or non-

governmental organisations. The WRC has now been advised to take a policy decision on complaints received directly from private persons and non-governmental organisations. The Hon'ble Court shall be informed of such decision at the time of hearing of the case on 24-8-2006.

REGARDING QUESTION NO.3:- The NCTE takes the complaints received from State Govts. and Universities very seriously. The WRC requests the concerned State Govts. and Universities to forward the enquiry report along with statements and documents for initiating action u/s 17(1) of the NCTE Act. The WRC has now been advised to evolve more expeditious method as such enquiry reports, statements and documents are not promptly sent by concerned State Govts. and Universities. The decision shall be communicated at the time of hearing of the case on 24-8-2006.

REGARDING QUESTION NO.4:- In the present group of 15 matters, the WRC obtained the first information on receipt of letter of the Commissioner, Higher Education, dated 23-6-2006. He was requested, vide letter dated 19-7-2006, to forward the names and addresses of institutions as well as the enquiry report and court orders referred to in the letter dated 23-6-2006."

30. It can thus be seen that NCTE has taken certain conscious decisions to deal with the question of growing number of complaints being received by several self-finance institutions. It is expected that the machinery be energised and set in motion in such a way that final decisions are taken without undue delay so as to achieve the dual purpose of clearing the institutions which are facing frivolous complaints at the same time

taking prompt action against those who are found to have committed irregularities. For the above purpose, it would be open for NCTE to rely on the State machinery at-least for collection and forwarding of complaints. As noted earlier, NCTE is entrusted with the task of ensuring clean administration in vast area spanning over large number of States in which hundreds of educational institutions are situated. It may be that in some cases, the complaints may be received by the Universities or State Governments. If such applications and complaints are forwarded to NCTE, it would be the duty of NCTE to inquire into the same and come to proper conclusions. NCTE can also consider the question of periodical sample inspection of institutions through its sub-committees.

31. Nothing stated by this Court here-in-above in any manner intends to convey that any action be taken without following requirement of fair hearing.

32. In the result, the petitions are allowed. The impugned actions challenged in these petitions

of not allotting students to various colleges are quashed. The admissions granted to the students pursuant to interim orders passed by this Court shall be treated as non provisional.

33. In Civil Applications, prayer for declaration of results of the students for examination conducted in April/May 2006 is granted.

34. It is expected that NCTE shall process all complaints against all the petitioners and take a final view thereon as expeditiously as possible. This Court has not expressed any opinion on these issues.

35. With these directions all the petitions and Civil Applications except Special Civil Application No.1969/2006, Civil Application No. 2713/2006 and Civil Application No.7753/2006, shall stand disposed of.

Rule made absolute accordingly with no order as to costs.

(Akil Kureshi, J.)

(raghu)